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4 Attorneys for Defendant STUART M. LEVIN, Trustee
5 of the STUART M. LEVIN REVOCABLE TRUST
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 CRAIG YATES, an individual; and
DISABILITY RIGHTS ENFORCEMENT,
12 EDUCATION, SERVICES; HELPING
YOU HELP OTHERS, a California public
13 benefit corporation,

14 Plaintiffs,

15 vs.

16 LEVIN COMMERCIAL FACILITY;
STUART M. LEVIN, Trustee of the
17 STUART M. LEVIN REVOCABLE
TRUST,
18

19 Defendants.
20

Case No. CV 07 6498 WHA

ANSWER TO COMPLAINT

Complaint Filed: December 28, 2007

21 **COMES NOW**, Defendant STUART M. LEVIN, Trustee of the STUART M.
22 LEVIN REVOCABLE TRUST, and in responding to Plaintiffs' Complaint herein, admits,
23 denies and alleges as follows:

24 1. In response to Paragraph 1, this responding Defendant lacks sufficient
25 information and belief to either admit or deny the allegations contained within this
26 paragraph, and based upon said lack of information and belief, denies the allegations
27 contained therein.
28

1 2. In response to Paragraph 2, this responding Defendant denies the allegations
2 contained within this paragraph.

3 3. In response to Paragraph 3, this responding Defendant admits the allegations
4 contained within this paragraph.

5 4. In response to Paragraph 4, this responding Defendant admits the allegations
6 contained within this paragraph.

7 5. In response to Paragraph 5, this responding Defendant lacks sufficient
8 information and belief to either admit or deny the allegations contained within this
9 paragraph, and based upon said lack of information and belief, denies the allegations
10 contained therein.

11 6. In response to Paragraph 6, this responding Defendant lacks sufficient
12 information and belief to either admit or deny the allegations contained within this
13 paragraph, and based upon said lack of information and belief, denies the allegations
14 contained therein.

15 7. In response to Paragraph 7, this responding Defendant lacks sufficient
16 information and belief to either admit or deny the allegations contained within this
17 paragraph, and based upon said lack of information and belief, denies the allegations
18 contained therein.

19 8. In response to Paragraph 8, this responding Defendant admits only that it has
20 a 50 percent undivided interest in said property.

21 9. In response to Paragraph 9, this responding Defendant admits to an
22 ownership as to an undivided 50 percent interest in said property only. In all other
23 respects, this responding Defendant admits the allegations contained within this paragraph.

24 10. In response to Paragraph 10, this responding Defendant lacks sufficient
25 information and belief to either admit or deny the allegations contained within this
26 paragraph, and based upon said lack of information and belief, denies the allegations
27 contained therein.
28

1 11. In response to Paragraph 11, this responding Defendant admits those
2 allegations contained within lines 12 through 18. This responding Defendant denies the
3 allegations contained at line 18 beginning with the word "on" through the balance of that
4 paragraph.

5 12. In response to Paragraph 12, this responding Defendant lacks sufficient
6 information and belief to either admit or deny the allegations contained within this
7 paragraph, and based upon said lack of information and belief, denies the allegations
8 contained therein.

9 13. In response to Paragraph 13, this responding Defendant denies the
10 allegations contained within this paragraph.

11 14. In response to Paragraph 14, this responding Defendant lacks sufficient
12 information and belief to either admit or deny the allegations contained within this
13 paragraph, and based upon said lack of information and belief, denies the allegations
14 contained therein.

15 15. In response to Paragraph 15, this responding Defendant lacks sufficient
16 information and belief to either admit or deny the allegations contained within this
17 paragraph, and based upon said lack of information and belief, denies the allegations
18 contained therein.

19 16. In response to Paragraph 16, this responding Defendant lacks sufficient
20 information and belief to either admit or deny the allegations contained within this
21 paragraph, and based upon said lack of information and belief, denies the allegations
22 contained therein.

23 17. In response to Paragraph 17, this responding Defendant lacks sufficient
24 information and belief to either admit or deny the allegations contained within this
25 paragraph, and based upon said lack of information and belief, denies the allegations
26 contained therein.

27 18. In response to Paragraph 18, this responding Defendant lacks sufficient
28 information and belief to either admit or deny the allegations contained within this

1 paragraph, and based upon said lack of information and belief, denies the allegations
2 contained therein.

3 19. In response to Paragraph 19, this responding Defendant lacks sufficient
4 information and belief to either admit or deny the allegations contained within this
5 paragraph, and based upon said lack of information and belief, denies the allegations
6 contained therein.

7 20. In response to Paragraph 20, this responding Defendant lacks sufficient
8 information and belief to either admit or deny the allegations contained within this
9 paragraph, and based upon said lack of information and belief, denies the allegations
10 contained therein.

11 21. In response to Paragraph 21, this responding Defendant lacks sufficient
12 information and belief to either admit or deny the allegations contained within this
13 paragraph, and based upon said lack of information and belief, denies the allegations
14 contained therein.

15 22. In response to Paragraph 22, this responding Defendant lacks sufficient
16 information and belief to either admit or deny the allegations contained within this
17 paragraph, and based upon said lack of information and belief, denies the allegations
18 contained therein.

19 23. In response to Paragraph 23, this responding Defendant lacks sufficient
20 information and belief to either admit or deny the allegations contained within this
21 paragraph, and based upon said lack of information and belief, denies the allegations
22 contained therein.

23 24. In response to Paragraph 24, this responding Defendant lacks sufficient
24 information and belief to either admit or deny the allegations contained within this
25 paragraph, and based upon said lack of information and belief, denies the allegations
26 contained therein.

27 25. In response to Paragraph 25, this responding Defendant lacks sufficient
28 information and belief to either admit or deny the allegations contained within this

1 paragraph, and based upon said lack of information and belief, denies the allegations
2 contained therein.

3 26. In response to Paragraph 26, this responding Defendant lacks sufficient
4 information and belief to either admit or deny the allegations contained within this
5 paragraph, and based upon said lack of information and belief, denies the allegations
6 contained therein.

7 27. In response to Paragraph 27, this responding Defendant lacks sufficient
8 information and belief to either admit or deny the allegations contained within this
9 paragraph, and based upon said lack of information and belief, denies the allegations
10 contained therein.

11 28. In response to Paragraph 28, this responding Defendant lacks sufficient
12 information and belief to either admit or deny the allegations contained within this
13 paragraph, and based upon said lack of information and belief, denies the allegations
14 contained therein.

15 29. In response to Paragraph 29, this responding Defendant lacks sufficient
16 information and belief to either admit or deny the allegations contained within this
17 paragraph, and based upon said lack of information and belief, denies the allegations
18 contained therein.

19 30. In response to Paragraph 30, this responding Defendant lacks sufficient
20 information and belief to either admit or deny the allegations contained within this
21 paragraph, and based upon said lack of information and belief, denies the allegations
22 contained therein.

23 31. In response to Paragraph 31, this responding Defendant denies the
24 allegations contained within this paragraph.

25 32. In response to Paragraph 32, this responding Defendant denies the
26 allegations contained within this paragraph.

27 33. In response to Paragraph 33, this responding Defendant denies the
28 allegations contained within this paragraph.

1 34. In response to Paragraph 34, this responding Defendant denies the
2 allegations contained within this paragraph.

3 35. In response to Paragraph 35, this responding Defendant denies the
4 allegations contained within this paragraph.

5 36. In response to Paragraph 36, this responding Defendant denies the
6 allegations contained within this paragraph.

7 37. In response to Paragraph 37, this responding Defendant denies the
8 allegations contained within this paragraph.

9 38. In response to Paragraph 38, this responding Defendant denies the
10 allegations contained within this paragraph.

11 39. In response to Paragraph 39, this responding Defendant denies the
12 allegations contained within this paragraph.

13 40. In response to Paragraph 40, this responding Defendant denies the
14 allegations contained within this paragraph.

15 41. In response to Paragraph 41, this responding Defendant denies the
16 allegations contained within this paragraph.

17 42. In response to Paragraph 42, this responding Defendant denies the
18 allegations contained within this paragraph.

19 43. In response to Paragraph 43, this responding Defendant denies the
20 allegations contained within this paragraph.

21 44. In response to Paragraph 44, this responding Defendant lacks sufficient
22 information and belief to either admit or deny the allegations contained within this
23 paragraph, and based upon said lack of information and belief, denies the allegations
24 contained therein.

25 45. In response to Paragraph 45, this responding Defendant repleads and
26 incorporates by reference, as if fully set forth again herein, the responses contained in
27 Paragraphs 1 through 44 of this answer.
28

1 46. In response to Paragraph 46, this responding Defendant admits the
2 allegations contained within this paragraph.

3 47. In response to Paragraph 47, this responding Defendant admits the
4 allegations contained within this paragraph.

5 48. In response to Paragraph 48, this responding Defendant admits the
6 allegations contained within this paragraph.

7 49. In response to Paragraph 49, this responding Defendant admits the
8 allegations contained within this paragraph.

9 50. In response to Paragraph 50, this responding Defendant admits that there are
10 specific prohibitions against discrimination set forth in § 302(b)(2)(a) and 42 U.S.C.
11 § 12182(b)(2)(a). In all other respects, this responding Defendant denies allegations
12 contained within said paragraph.

13 51. In response to Paragraph 51, this responding Defendant denies the
14 allegations contained within this paragraph.

15 52. In response to Paragraph 52, this responding Defendant denies the
16 allegations contained within this paragraph.

17 53. In response to Paragraph 53, this responding Defendant denies the
18 allegations contained within this paragraph.

19 54. In response to Paragraph 54, this responding Defendant denies the
20 allegations contained within this paragraph.

21 55. In response to Paragraph 55, this responding Defendant denies the
22 allegations contained within this paragraph.

23 56. In response to Paragraph 56, this responding Defendant denies the
24 allegations contained within this paragraph.

25 57. In response to Paragraph 57, this responding Defendant repleads and
26 incorporates by reference, as if fully set forth again herein, the responses contained in
27 Paragraphs 1 through 56 of this answer.
28

1 58. In response to Paragraph 58, this responding Defendant admits the
2 allegations contained within this paragraph.

3 59. In response to Paragraph 59, this responding Defendant admits the
4 allegations contained within this paragraph.

5 60. In response to Paragraph 60, this responding Defendant admits the
6 allegations contained within this paragraph.

7 61. In response to Paragraph 61, this responding Defendant denies the
8 allegations contained within this paragraph.

9 62. In response to Paragraph 62, this responding Defendant denies the
10 allegations contained within this paragraph.

11 63. In response to Paragraph 63, this responding Defendant denies the
12 allegations contained within this paragraph.

13 64. In response to Paragraph 64, this responding Defendant denies the
14 allegations contained within this paragraph.

15 65. In response to Paragraph 65, this responding Defendant denies the
16 allegations contained within this paragraph.

17 66. In response to Paragraph 66, this responding Defendant denies the
18 allegations contained within this paragraph.

19 67. In response to Paragraph 67, this responding Defendant repleads and
20 incorporates by reference, as if fully set forth again herein, the responses contained in
21 Paragraphs 1 through 66 of this answer.

22 68. In response to Paragraph 68, this responding Defendant admits the
23 allegations contained within this paragraph.

24 69. In response to Paragraph 69, this responding Defendant denies the
25 allegations contained within this paragraph.

26 70. In response to Paragraph 70, this responding Defendant denies the
27 allegations contained within this paragraph.
28

1 71. In response to Paragraph 71, this responding Defendant lacks sufficient
2 information and belief to either admit or deny the allegations contained within this
3 paragraph, and based upon said lack of information and belief, denies the allegations
4 contained therein.

5 72. In response to Paragraph 72, this responding Defendant denies the
6 allegations contained within this paragraph.

7 73. In response to Paragraph 73, this responding Defendant denies the
8 allegations contained within this paragraph.

9 74. In response to Paragraph 74, this responding Defendant lacks sufficient
10 information and belief to either admit or deny the allegations contained within this
11 paragraph, and based upon said lack of information and belief, denies the allegations
12 contained therein.

13 75. In response to Paragraph 75, this responding Defendant repleads and
14 incorporates by reference, as if fully set forth again herein, the responses contained in
15 Paragraphs 1 through 74 of this answer.

16 76. In responding to Paragraph 76, this responding Defendant lacks sufficient
17 information and belief to either admit or deny the allegations contained within lines 1
18 through 3 of that paragraph and, based upon such lack of information and belief, denies
19 those allegations. This responding Defendant admits that § 51 of the Civil code provides
20 as alleged in said paragraph. This responding party denies the allegations contained within
21 said paragraph commencing at line 19 through line 24.

22 77. In response to Paragraph 77, this responding Defendant denies the
23 allegations contained within this paragraph.

24 78. In response to Paragraph 78, this responding Defendant denies the
25 allegations contained within this paragraph.

26 79. In response to Paragraph 79, this responding Defendant denies the
27 allegations contained within this paragraph.
28

1 80. In response to Paragraph 80, this responding Defendant denies the
2 allegations contained within this paragraph.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 81. Plaintiffs' Complaint fails to state a claim against Defendant upon which
6 relief can be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 82. The Complaint on file herein, and each purported claim for relief stated
9 therein, is barred by the applicable statutes of limitation of the State of California,
10 including but not limited to California *Code of Civil Procedure* Sections 338 and 340, and
11 California Business and Professions Code Section 17208.

12 **THIRD AFFIRMATIVE DEFENSE**

13 83. Plaintiffs have failed to mitigate their damages and injuries, if any, and such
14 failure to mitigate their proximately caused the alleged damages and injuries, if any.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 84. Plaintiffs, in connection with any and all of the transactions or allegations
17 which are the subject of their Complaint on file herein, have not suffered and will not
18 suffer any damages by reason of the alleged acts or omissions of this answering Defendant,
19 and therefore Plaintiffs have no valid claims against this answering Defendant.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 85. All events, happenings, injuries, and damages referred to in Plaintiffs'
22 Complaint on file herein, were proximately caused by the negligence and/or fault of
23 plaintiffs and/or other firms, persons, corporations, or entities other than this answering
24 Defendant, or over whom this answering Defendant exercised no jurisdiction or control,
25 and for whose conduct this answering Defendant are not responsible or liable; therefore, if
26 there is found to be any fault on the part of this answering Defendant which in any manner
27 or degree contributed to Plaintiffs' alleged injuries and damages, if any, a finding should
28

1 be made apportioning and affixing the comparative fault of any and all such persons or
2 parties, whether named in this action or otherwise.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 86. The claims for relief alleged in plaintiffs' Complaint on file herein are barred
5 by reason of the fact that Plaintiffs, upon being fully informed of the acts and events of
6 which they now complain, ratified and affirmed all conduct with respect to those acts and
7 events, and therefore, Plaintiffs have waived all such claims and are estopped from
8 asserting the same against this answering Defendant.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 87. Plaintiffs are barred from recovery herein by reason of the fact that Plaintiffs
11 voluntarily and knowingly entered into and engaged in the transactions and conduct
12 alleged in the Complaint on file herein and voluntarily and knowingly assumed all risk
13 relating to said transactions and conduct at the times and places mentioned in the
14 Complaint on file herein and prior thereto.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 88. Defendant alleges, upon information and belief, that any act or omission on
17 their part made the basis of any purported claim, was excused as it would have
18 fundamentally altered the nature of the services offered at 8 Commercial Boulevard,
19 Novato, California.

20 **NINTH AFFIRMATIVE DEFENSE**

21 89. Defendant alleges, upon information and belief, that any act or omission on
22 their part made the basis of any purported claim, was excused as the removal of the
23 barriers described herein, if any, was not readily achievable.

24 **TENTH AFFIRMATIVE DEFENSE**

25 90. Defendant alleges, upon information and belief, that any act or omission on
26 their part made a basis of any purported claim, was excused as a result of structural
27 impracticability.

28

ELEVENTH AFFIRMATIVE DEFENSE

91. Defendant alleges, on information and belief, that some or all of Plaintiffs' claims may be barred, in whole or in part, by the doctrines of *laches*, waiver, estoppel, unclean hands, or other equitable doctrines.

TWELFTH AFFIRMATIVE DEFENSE

92. Plaintiffs are barred from recovery by reason that, at all times indicated in the Complaint on file herein, this answering Defendant provided reasonable accommodations to handicapped individuals and exercised due diligence in their acts and activities.

THIRTEENTH AFFIRMATIVE DEFENSE

93. Defendant alleges, upon information and belief, that given the work requested by Plaintiffs, Defendant's conduct was excused as a result of the undue burden of constructing the requested work at 8 Commercial Boulevard, Novato, California.

FOURTEENTH AFFIRMATIVE DEFENSE

94. Defendant alleges, upon information and belief, that the Complaint on file herein is improperly pled, in that it is more properly brought as a class action lawsuit, not as an individual action.

FIFTEENTH AFFIRMATIVE DEFENSE

95. Defendant alleges, upon information and belief, that Plaintiffs are not the proper representatives to represent the interests of the general public or those of the disabled public.

SIXTEENTH AFFIRMATIVE DEFENSE

96. Plaintiffs are barred from recovery by reason of the fact that they improperly seek monetary damages and are seeking fluid fund recovery in violation of the law.

SEVENTEENTH AFFIRMATIVE DEFENSE

97. Plaintiffs are barred from recovery of attorneys' fees as they are not a proper form of relief in this action as Plaintiffs are not acting in the interests of, or on behalf of, any public interest group.

1 **WHEREFORE**, Defendant requests that the Court enter a judgment:

- 2 a) Dismissing Plaintiffs' Complaint against Defendant with prejudice;
- 3 b) Declaring that Defendant has no obligation to perform additional work at
- 4 8 Commercial Boulevard, Novato, California.;
- 5 c) Awarding Defendant his attorneys' fees, costs and disbursements; and
- 6 awarding such other and further relief to Defendant as the Court deems just,
- 7 equitable and proper.
- 8

9 **DEMAND FOR JURY TRIAL**

10 This responding party demands trial by jury.

11

12

13 Dated: February 7, 2008

HAIGHT BROWN & BONESTEEL LLP

14 By: 

15 Richard E. Morton
16 Attorneys for Defendant
17 STUART M. LEVIN, Trustee of the
18 STUART M. LEVIN REVOCABLE
19 TRUST
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE
Yates v. Levin / USDC Case No. 07 6498 WHA

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5 Hutton Centre Drive, Suite 900, Santa Ana, California 92707.

On **February 8, 2008**, I served the foregoing document described as: **ANSWER TO COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Thomas E. Frankovich, Esq.
Julia M. Adams, Esq.
2806 Van Ness Avenue
San Francisco, CA 94109

Attorney for Plaintiffs
P: 415.674.8600
F: 415.674.9900
E: mmartinez@disabilitieslaw.com

☒ **(By Mail)** I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

☐ **(By Personal Service)** I delivered such envelope by hand to the offices of the addressee(s).

☐ **(By Overnight Express)** I deposited in a box or other facility regularly maintained by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as stated above, with fees for overnight delivery paid or provided for.

☐ **(By Facsimile Transmission)** In addition to service by mail, as set forth above, the counsel or interested party authorized to accept service was also forwarded a copy of said document(s) by facsimile transmission at the facsimile number corresponding with his/her name. The facsimile machine I used complied with CRC Rule 2003(3) and no error was reported by the machine. Pursuant to CRC Rule 2005(i), I caused the machine to print a transmission record of the transmission, which will be provided upon request.

Executed on **February 8, 2008**, at Santa Ana, California. I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Lori Totri

Lori Totri